IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 345 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT CO-OPERATIVE OILSEEDS GROWERS' FEDERATION LTD.

Versus

DY. C.I.T.

Appearance:

MR JP SHAH for Petitioner

MR Mihir Joshi with Mr.MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 27/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The appeal is admitted on the following substantial question of law:

"Whether the Tribunal was right in law in rejecting the admission of the additional ground which did not require any additional fact or evidence for adjudication and which was a patent mistake committed by the assessing officer by disallowing the depreciation of Rs. 6,01,198/-in respect of the same assets twice?"

2. Mr Mihir Joshi waives service of notice of final hearing on behalf of the revenue.

3. This is an appeal under section 260A of the Income tax Act, 1961 (hereinafter referred to as `the Act') challenging the judgment and order dated 16.6.2000 of the Income tax Appellate Tribunal (hereinafter referred to as `the Tribunal') in Income Tax Appeal No. 4012/Ahd/1992.

4. The appellant is a cooperative society carrying on business of marketing agricultural produce of its members. Income tax return for the year 1985-86 was filed wherein the assessee claimed depreciation for a sum of Rs. 11,07,230/- in respect of the land, building, machinery for Jamnagar project and also claimed depreciation for the project at Anand. The assessing officer passed the assessment order dated 23.3.1988 under section 143 (3) of the Act allowing the assessee's claim for depreciation. However, the assessing officer thereafter issued notice dated 27.3.1990 under section 148 of the Act for reassessment. After hearing the assessee, the Deputy Commissioner of Income tax, Rajkot passed his order dated 23.3.1992 disallowing the depreciation to the extent of Rs. 12,71,203/- for Jamnagar project and Rs. 3,09, 946/- in respect of the Anand project.

5. The assessee's appeal was dismissed by CIT, Rajkot , The assessee also filed an appeal before the Tribunal. At the time of hearing of the appeal before the Tribunal, the following main challenges were levelled;

(1) The Commissioner erred in holding that the reopening of section 143 (3) assessment done previously was valid;

(2) The Commissioner erred in confirming disallowance

of depreciation to the extent of Rs. 15,81,189/- and

(3) Disallowance made by the assessing officer at Rs. 15,81,189/- as confirmed by the Commissioner was required to be reduced to Rs. 9,79,945/-.

After giving elaborate reasons, the Tribunal negatived the first two challenges on merits. It,however, declined to entertain the final challenge on the ground that it was not taken up either before the assessing officer or before the Commissioner of Income tax (appeals).

6. After issuing notice to the respondent, we have heard the learned counsel for the appellant-assessee and the revenue at length. We agree with the Tribunal that notice of reopening of assessment under section 148 of the Act was issued within four years on the grounds permissible under law. The Tribunal found that in the original order of assessment, the assessing officer had allowed depreciation on the full cost of plant and machinery without reducing the amount of grant which was paid by National Dairy Development Board (`NDDB') to the appellant for purchasing such plant and machinery. The Tribunal found that in the original assessment proceedings, the assessing officer had called for material from the assessee regarding cost of machinery and grant received from NDDB; but the assessing officer did not pursue the inquiry and the audit party thereafter rightly pointed out that the assessing officer had not taken into consideration the provisions of section 43 (1) of the Act which required deduction of the amount of grant paid by NDDB from the cost of machinery. The Tribunal has discussed all the authorities relevant to the controversy and come to the conclusion that it was not a case of mere change of opinion. We see no reason to interfere with the said finding of the Tribunal .

7. As far as the second question is concerned, the Tribunal has examined all the relevant agreements and come to the conclusion that the grant was given by NDDB for purchasing plant and machinery and that it was not a general grant for the project as such. Accordingly, applying the test laid down by the Apex court in P.J.Chemicals Ltd. vs. CIT,(1994) 210 ITR 830, the Tribunal has come to the conclusion that the grant having been given for the purpose of buying the plant and machinery , the assessing officer had rightly passed the order in reassessment proceedings for reducing the amount of depreciation to the extent that it was attributable to the amount of grant. We are also in agreement with this

finding of the Tribunal.

8. Learned counsel for the assessee is,however, on a firmer ground when he submits that while passing the impugned order dated 23.3.1992, the assessing officer committed a patent arithmetical error by reducing the depreciation amount in respect of the plant and machinery for Jamnagar project by disallowing the claim of depreciation to the extent of Rs.12,71,203/-; whereas, the amount of depreciation disallowable even as per the finding of the assessing officer in the reassessment proceedings was only Rs.6,70,005/-. He pointed out the mistake from para 6 of the reassessment order:

"WDV as on 1.11.93 -Amount of grant

	Amt. Rs.	Amt. Rs.	Rate of depre.	Dep Rs.
Land	4,19,417	1,23,937	-	-
Building	44,35,578	13,10,707	5%	65,535
Factory Rd.	2,21,437	65,454	5%	3,272
Plant &	1,35,63,449	40,07,962	15%	6,01,198
				12,71,203

(instead of 6,70.005)

The contention of the learned counsel for the assessee is that the amount of Rs. 6,01,198/- is considered twice over while aggregating disallowable depreciation for the Jamnagar Project (Rs. 6,70,005 + Rs. 6,01,198 = Rs. 12,71,703).

9. The above factual mistake is not seriously contested by the learned counsel for the revenue. The revenue, however, opposes the grant of any relief on the amount of depreciation on the ground that that, this issue does not involve any substantial question of law . If at all, the assessee had any remedy, it was by way of filing an application under section 154 of the Act. The four year period of limitation prescribed by sub-section (7) of section 154 having elapsed, it is not open to the assessee to seek relief through the provisions of section 260A which permit grant of relief only in a matter which involves a substantial question of law.

10. In rejoinder, Mr. Shah for the assessee has heavily relied on the decision of the Apex court in National Thermal Power Co.Ltd.vs. CIT, 229 ITR 383.

11. Having heard the learned counsel for the parties, we are of the view that the Tribunal was not right in not permitting the appellant-assessee to raise the question about arithmetical calculation of disallowable depreciation. In the aforesaid decision of National Thermal Power Co. (supra), the Apex court has observed that the view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (appeals) is too narrow a view to take of the powers of the Tribunal. If it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item.

12. It is true that in the above case, the Apex court was dealing with the power of the Tribunal to entertain a question of law arising from the facts already on record. The Tribunal's power cannot conceivably be lesser in case of an arithmetical mistake apparent on the face of the reassessment order. In the facts of the present case, it is apparent that aggregate of the amounts of disallowable depreciation works out to only Rs. 6,70,005/-. By calculating the amount of Rs. 6,01,198/twice over, the assessing officer raised the amount of disallowable depreciation to Rs. 12,71,203/for Jamnagar project which resulted into consequential mistake of total disallowable depreciation calculated at Rs. 15,81,139/- in the final operative portion of the assessment order.

13. We would also like to note that the appellant had raised this question before the Tribunal but it was not allowed to be raised only on the ground that it was a new ground and it was not taken up before the assessing officer or before the Commissioner (appeals). The appeal before the Tribunal was filed within four years from the date of reassessment order which was passed on 23.3.1992 and hence, the grievance made by the appellant-assessee regarding the glaring arithmetical mistake in the calculation of disallowable depreciation regarding Jamnagar project ought to have been entertained by the Tribunal.

14. Since this glaring arithmetical mistake is brought to our notice in the course of hearing of the

appeal arising from the reassessment order, and on facts, it is not disputed, we see no reason not to allow the appeal only to the limited extent of remanding the case to the Tribunal for permitting the question to be raised and then granting the necessary relief to the assessee.

15. In view of the above discussion, we direct the respondents to recalculate the amount of disallowable depreciation for Jamnagar project by arriving at correct aggregated amounts of the following three items of disallowable depreciation .

"WDV as on 1.11.93 -Amount of grant

	Amt. Rs.	Amt. Rs.	Rate of depre. Rs.	Dep Rs.
Land	4,19,417	1,23,937	-	-
Building	44,35,578	13,10,707	5%	65,535
Factory Rd.	2,21,437	65,454	5%	3,272
Plant & Machinery	1,35,63,449	40,07,962	15%	6,01,198
				6,70,005

Since the aggregate works out to Rs. 6,70,005/instead of Rs. 12,71,203/-, the respondents shall recalculate and recompute the tax payable by the assessee accordingly, within two months from the date of receipt of a certified copy of this judgment.

16. The appeal is accordingly partly allowed to the aforesaid extent. We do not find any substantial question insofar as questions (1) and (2) are concerned . We allow the appeal only insofar as question (3) is concerned in the aforesaid terms. There shall be no order as to costs.

(D. M. Dharmadhikari, C.J.)

(M. S. Shah, J.)

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